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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIAPer MARY K. DANOREA CLERK  
DEPUTY CLERK

KIM SMITH, :  
 Plaintiff : CIVIL ACTION NO. 1:01-0817  
 v. : (CALDWELL, J.)  
 : (MANNION, M.J.)  
 JAMES MORGAN, et al., :  
 Defendants :

O R D E R

On November 30, 2001, the plaintiff filed a motion for a temporary restraining order, in which he alleges that William Voeckler of the Business Office at SCI-Coal Township failed to mail seven (7) pieces of his legal mail.<sup>1</sup> The plaintiff seeks an order from this court directing Mr. Voeckler to cease hindering his access to the courts. (Doc. No. 39).

Upon review of the motion, the court noted that there was no indication that the plaintiff had served the motion upon the defendants in accordance with Rule 5 of the Federal Rules of Civil Procedure. By order dated December 6, 2001, the court directed the plaintiff to serve the motion for temporary restraining order upon the defendants and file with the court a certificate of service which indicated the date on which service of the motion was made.

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<sup>1</sup>A memorandum attached to the plaintiff's motion indicates that the Business Office received thirteen (13) pieces of legal mail from the plaintiff. Six (6) pieces of the legal mail were sent out, with seven (7) pieces being returned to the plaintiff because he had reached his \$10.00 postage limit for the month of November. The plaintiff was informed that he could resubmit the mail in December.

(Doc. No. 41).

On December 26, 2001, the plaintiff filed a letter with the court, in which he indicated that he no longer had a copy of the above motion because he had accidentally mailed all of his copies to the Pennsylvania Commonwealth and Superior Courts. The plaintiff requested that the court either send him a copy of his motion, or serve the defendants with a copy of the motion so that they could respond. (Doc. No. 48).

On January 3, 2002, the Clerk of Court responded to the plaintiff's letter by forwarding to him a copy of his motion. In addition, the plaintiff was informed that pursuant to Rule 5 of the Federal Rules of Civil Procedure, it was his obligation to serve a copy of the motion upon the defendants. (Doc. No. 51).

As of the date of this order, the plaintiff has failed to file with the court a certificate of service indicating that he has served the motion for temporary restraining order upon the defendants.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

the plaintiff's motion for temporary restraining order,  
(Doc. No 39), is **DISMISSED** for the plaintiff's failure to

follow the directives of this court's order dated  
December 6, 2001, (Doc. No. 41).

A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, sweeping loop.

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MALACHY E. MANNION  
United States Magistrate Judge

Date: March 7, 2002